MOTION FILED
JUL 3 1991

No. 90-6588
No. 90-1205

In The

Supreme Court of the United States

October Term, 1991

JAKE AYERS, JR., et al.,

Plaintiff-Petitioners

UNITED STATES OF AMERICA

Plaintiff-Intervenor

v.

RAY MABUS, GOVERNOR, STATE OF MISSISSIPPI, et al.,

Defendant-Respondents

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

MOTION OF JACKSON STATE UNIVERSITY FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-PETITIONERS AND BRIEF

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July 3, 1991

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MOTION OF JACKSON STATE UNIVERSITY FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-PETITIONERS

The moving party Jackson State University is a Historically Black Institution with a Black enrollment comprising over 91% of the University Student population.

Jackson State University moves for leave to file the attached brief supporting the Plaintiffs request that the decision of the Court of Appeals for the Fifth Circuit (en banc) be reversed and remanded for further proceedings in accordance with the decision of the Fifth Circuit Court of Appeals majority in *Ayers v. Allain*, 893 F.2d 732 (1990).

The private plaintiffs and the United States Government have consented to the filing of this brief. As of the final preparation of this brief the defendant-respondents had yet to state a position. Movant has requested the consent of the respondents.

The moving party, which is a Historically Black University within the Mississippi State Higher Education System, desires to draw this Court's attention to facts and legal precedent which demonstrate that the present system of funding and resource allocation to Historically Black Institutions in Mississippi by the State is a vestige of both slavery and discriminatory educational practices in Mississippi postdating slavery, and as such this system violates the 13th and 14th Amendments rights of Black persons throughout the State of Mississippi.

The highly relevant observations of the movants have not been brought to this Court's attention by the petitioners. Therefore, amicus participation will be of assistance to the Court.

Respectfully submitted,

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QUESTION PRESENTED

WHETHER THE PRESENT SYSTEM OF FUNDING AND RESOURCE ALLOCATION TO STATE UNIVERSITIES IN MISSISSIPPI IS AN UNCONSTITUTIONAL VESTIGE OF SLAVERY AND POST SLAVERY EDUCATIONAL DISCRIMINATION?

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INTEREST OF THE AMICUS CURIAE

AMICUS CURIAE is a Historically Black University which currently has a student population which is over 91% Black. It is the largest predominantly Black University in the State.

The Amicus Curiae was an institution established to provide higher education to a Black population which was and is significantly denied the same by the State's Historically White Institutions. Over 70% of all Black students in Mississippi's college and university system now attend Historically Black Institutions.

Amicus Curiae is incapable of fulfilling its mission to provide a quality education and constitutionally required equal education opportunities to its students where State policy underfinances Black students' education by disproportionately providing resources to universities and to students through a system of procedures and policies which discriminate on the basis of race, and perpetuate historic practices which are separate and unequal.

STATEMENT OF THE CASE

Amicus Curiae accepts and adopts the Statement of the Case and the facts as presented in the Brief of the Private Plaintiff-Petitioners in this case.

The following facts are particularly relevant to the present contribution of Amicus Curiae. The State of Mississippi maintained a dual system of education based on a policy of absolute racial segregation through the spring of 1962. (*Ayers v. Allain, et al,* 893 F2d 732 at 743).

As of 1986 over 99% of the State's White students attend Historically White Institutions while over 71% of the Black students attend Historically Black Institutions. Over twice as many White students as Black students are enrolled in Mississippi Universities in undergraduate studies. Similar patterns exist with respect to graduate studies.

The majority of the Professors and Instructors at Historically Black Mississippi Institutions are Black, while no Historically White Institution of Higher Education in the State System has Black faculty which consist of over 5% of the whole.

With regard to educational funding and salaries for Instructors and Professors, Historically White Universities receive substantially more money and resources than those which are Historically Black. In other areas of resource allocations similar disparities are found. (*Ayers II*, at 735-742).

ARGUMENT

THE PRESENT SYSTEM OF FUNDING AND RESOURCE ALLOCATION TO STATE UNIVERSITIES IN MISSISSIPPI IS AN UNCONSTITUTIONAL VESTIGE OF SLAVERY AND POST SLAVERY EDUCATIONAL DISCRIMINATION.

In confronting the facts of this case one is reminded of the tale of "White Walt and the comely maiden Ebony Black."

It seems that Walt, a caucasian male, in an open and self declared act of disdain for Black females had chained and locked Ms. Black to the tracks of degradation.

There she laid in the path of the "Destruction Express". But due to the intervention of our heroic character, U.S. Constitution, Walt was constrained to renounce his foul views toward Black females. Indeed he declared that never again would he do what he had done to Ms. Black.

Astonishingly, however, when called upon to release Ms. Black from the tracks he declined, contending that his only obligation under his new philosophy was to devote himself to a race and sex neutral policy from henceforth. The past was the past, and bygones should be bygones, or so Walt said.

Even more astonishing was the fact that when asked again to intervene U.S. Constitution, our hero, hesitated to do so as his attention was drawn to a contest between various parties who debated Walt's obligations. Some actually said that Ms. Black was now free to arise and leave the track on her own, since Walt's new policy, at least on paper, presented no hinderance to her seeking a better plight. Admittedly, the Walt protagonists were forced to conceed, Ms. Black may have some difficulty acquiring the key or other resources necessary to disconnect herself from the track. Yet some, although not most, in Ms. Black's predicament had managed. At least this is what the "race and sex neutral" proponents said. Many challenged the logic and practical application of this so-called race and sex neutral position, and questioned whether this position was really what it purported to be.

The parties struggled back and forward with their observations and eloquent presentations. Then someone shouted "THE TRAIN IS COMING."

In Mississippi, gross and growing disparities continue in the level and amount of education received by Blacks as compared to Whites. Poverty and various other social pathologies intensify faster and expand because of the educational gap. There is little evidence that the social conditions and education of Blacks relative to Whites are substantially more equal than they were thirty years ago.

All concede that a racist unequal educational system in Mississippi was deliberately developed by the State. It is also uncontravertable that the educationally disparate impact on Blacks in Mississippi is still evident in the present system of higher education despite the curious designations of various Universities with various "missions", and the otherwise adoption of supposedly race neutral policy.

Yet Black higher education institutions were the predominant source of Black higher education before federal intervention forced the State to seek neutral names, and disguises for old practices, and Black higher educational institutions remain the predominant avenue for Black post high school education.

There could be many reasons for this situation which are not related to the exercise of White supremacist perogatives in the education system. (i.e. Black schools are often located in Black population districts, the desire of Blacks to obtain education which reinforce their heritage and so on.)

Yet there is no constitutionally permissible reason why Blacks who attend these Universities are victimized by the same funding inequalities and resource deprivations that bedeviled their predecessors over thirty years ago.

If only so-called comprehensive educational institutions are to receive the highest levels of funding, then Historically Black Institutions should not be denied the opportunity to share this designation and the resources which go with it.

The right to equal education for Blacks and Whites is a principle which all post Civil War cases have upheld. The State has the absolute obligation to ensure the same. *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954); *Sweatt v. Painter*, 339 U.S. 629, 70 S. Ct. 848, 94 L.Ed.2d 1114 (1950); *McLaurin v. Oklahoma State Regents for Higher Educ.*, 339 U.S. 637, 70 S. Ct. 851, 94 L.Ed. 1149 (1950).

The facts of this case clearly show that equal opportunity in higher education is something which Blacks in Mississippi still do not have. As the Court so eloquently pointed out in *Ayers II, supra*, the Constitution demands that the State eradicate all vestiges of its racially discriminatory system. *Green v. School Board of New Keat County*, 391 U.S. 430, 88 S. Ct. 1689, 20 L.Ed. 2d 716 (1968); *Grier v. Alexander*, 801 F.2d 799 (6th Cir. 1986).

Such an obligation is not only imposed by the 14th Amendment's equal protection clause, but it is mandated by the 13th Amendment to the U.S. Constitution. The 13th Amendment not only abolishes slavery, but also abrogates the badges of this invidious institution. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

Just as this Court saw fit to strike down housing policies which were associated with a policy of White supremacy which arose from the system of slavery, so must it wipe out educational policies arising from White supremacy which has survived the slave system.

CONCLUSION

Consistent with the demands and requirements of the 14th and 13th Amendments, this Court should reverse the decision of the 5th Circuit (en banc) Court of Appeals and remand this case to the District Court to proceed in a mannor consistent with the opinion of the 5th Circuit in *Ayers II*.

Respectfully submitted,

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APPENDIX

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July 1, 1991

Honorable Alvin O. Chambliss, Jr.
North MS Rural Legal Services
P. O. Box 928
Oxford, MS 38665

Re: Ayers et al v. Mabus et al
Number: 90-6588
90-1205

Dear Mr. Chambliss:

This is a brief letter confirming our oral request for the consent of your client to the filing of a Brief Amicus Curiae by Jackson State University.

Thank you for consenting to the same.

Sincerely,

/s/ Chokwe Lumumba
CHOKWE LUMUMBA
Attorney for Jackson
State University

gr

SOUTHWEST MISSISSIPPI
LEGAL SERVICES CORPORATION

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July 1, 1991

Mr. Kenneth W. Starr
Solicitor General
U. S. Dept. of Justice
Washington, D.C. 20530

Attention: Jeffrey P. Minear

Re: Ayers et al, v. Ray Mabus, et al, 90-6588
U.S. Supreme Court

Dear Mr. Minear:

Pursuant to our conversation on June 27, 1991, I am forwarding you this written request for the consent of the Department of Justice to the filing of an Amicus Curiae Brief in the above referenced cause, by Jackson State University, one of the three Historical Black Universities in Mississippi.

You indicated by phone that the Department did consent to the same, unless we were notified of the contrary.

Thank you.

Sincerely,

/s/ Chokwe Lumumba
CHOKWE LUMUMBA
Attorney for Jackson
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July 1, 1991

Honorable Mike Moore
Attorney General
State of Mississippi
P. O. Box 220
Jackson, MS 39205

Re: Ayers et al v. Ray Mabus et al
No. 90-6588 – U.S. Supreme Court

Dear Attorney General:

I am writing to request the permission of the State of Mississippi to the filing of a Brief Amicus Curiae by Jackson State University in the above referenced cause.

I have attempted on two occasions to reach your Counsel, Attorney William F. Goodman, and Special Assistant Attorneys General Paul Stephenson III, and William P. Ray by phone to make this request.

I have left messages with a secretary at their office requesting the same. Mr. Ray returned one of my calls but I was not in my office. Consequently I am as of this date without a response from the State with regards to the request to consent to Amicus Curiae Brief by Jackson State University.

Please respond today as soon as possible.

Sincerely,
/s/ Chokwe Lumumba
CHOKWE LUMUMBA

gr

cc: William F. Ray
By Fax